

IN THE MATTER OF the Ontario Human Rights Code, 1981,
S. O. 1981, c.53, as amended;

AND IN THE MATTER OF the Complaint of Cindy Petersen
dated October 4, 1990, alleging discrimination in
employment on the basis of sex, harassment and sexual
solicitation, by Impact Interiors Inc., and Ken Walia

AND IN THE MATTER OF the Complainant Shirley Hom
dated November 4, 1990, alleging discrimination in
employment on the basis of sex, harassment and sexual
solicitation, by Impact Interiors Inc. and Ken Walia

B E T W E E N:

SHIRLEY HOM and CINDY PETERSEN

Complainants

- and -

IMPACT INTERIORS INC. and KEN WALIA

Respondents

APPEARANCES:

Catherine Bickley

Counsel for the Ontario Human
Rights Commission

Shirley Hom and
Cindy Petersen

Complainants

Ken Walia

Personal Respondent, and on
behalf of the Corporate
Respondent

D E C I S I O N

These complaints were filed by Shirley Hom and Cindy Petersen, who were employed by the Respondent, Impact Interiors Inc. for five and two days respectively in June 1990. The Respondent Ken Walia was the President and sole shareholder of the Corporate Respondent. The Complainants alleged that during their short periods of employment in the small corporate office, their Supervisor, Mr. Walia, subjected them to sexual harassment, sexual solicitations and advances, and a poisoned work environment, contrary to what are now sections 5(1) and 7(2) and (3)(a) of the Ontario Human Rights Code, R.S.O. 1990, c.H.19, and that they were forced to resign as a result of this conduct.

I heard the testimony of the two Complainants as well as another employee of Impact Interiors Inc., and I also heard the testimony of the Respondent Mr. Walia. The Complainants' testimony contained allegations against Mr. Walia which, if true, undoubtedly constitute violations of the provisions of the Code listed above. Mr. Walia essentially denied these allegations in their entirety and expressed indignation at the allegations and the proceedings. Where the testimony of the Complainants and the Respondents is in conflict, I have no hesitation in accepting the Complainants' evidence for the following reasons:

1. The Complainants testified in a straightforward, credible way, and their testimony was not impaired in any way through vigorous cross-examination by Mr. Walia.
2. During most of the hearing before me, Mr. Walia appeared to be inebriated (as indeed he was alleged often to be at work), and I have no faith in his recollection.
3. There were significant inconsistencies in Mr. Walia's testimony. For example:

(a) He stated that he forgave Lucy Simas, his employee for about three months, for stealing from him, yet fired her for talking at work.

(b) He stated that he did not fire Ms. Hom for stealing, yet fired her for faults in her typing.

(c) He stated emphatically in his testimony that he fired Ms. Petersen, yet he stated the contrary in his letter of May 8, 1991 to a human rights officer (Exhibit 21).

4. Some aspects of Mr. Walia's testimony were simply not believable in themselves. For example, he repeatedly asserted that Ms. Petersen provided no information regarding her prior work experience in her application for employment, and in particular she did not provide her resumé. Mr. Walia then altered his testimony to state that he was given an old resumé, not a current one.

5. Mr. Walia volunteered and repeatedly stated that he had had no prior involvement with the Human Rights Commission, whereas in fact he and the Corporate Respondent in this case were named as Respondents to a 1983 complaint involving similar allegations of discrimination because of sex and sexual solicitation.

6. Mr. Walia's manner throughout the hearing, including his testimony, was belligerent, rude, and foul-mouthed, and was consistent with the allegations made against him in this case.

7. I heard similar fact evidence from Lucy Simas, an independent witness, who had no contact with the processing of these complaints until she was contacted by a human rights officer almost two years after the termination of employment of the Complainants. Ms. Simas' testimony revealed that during her employment between November 1991 and February 1992, she was subjected to verbally abusive and sexually explicit comments by Mr. Walia, who grabbed her buttocks on one occasion. Ms. Simas first met the Complainants on the day she testified at the hearing before me.

The Complainants' evidence, which I accept, can be summarized as follows:

Ms. Hom was a student who was hired by Mr. Walia as a secretary, and commenced work on Friday, June 15, 1990. On her first day, Mr. Walia asked her if she was seeing anybody. When she said no, he asked whether it was because her parents did not approve. He said that he was a match-maker, that he had matched 30 or 40 couples, and that he would find a "nice, rich, Chinese guy" for her.

On one day during the following week, while in his office, Mr. Wilia asked Ms. Hom if she was dating a "black guy". She said that she was not, and asked why he was inquiring. He responded that she was wearing a lot of rings, and that "girls wearing lots of rings date black guys". On another day, Mr. Walia told Ms. Hom to "fuck off" when she asked him on several occasions to sign a cheque for a client who was waiting for it. Mr. Walia had been out late the previous night and wanted to sleep.

On Tuesday, June 19, Ms. Hom asked Mr. Walia for assistance with a photocopier that did not appear to be working. Mr. Walia put his arm around her, said that she had to be more patient and kissed her on the cheek. On two other occasions that day, Mr. Walia approached Ms. Hom, asked her what she was studying at university, and kissed her on the cheeks.

On Wednesday, June 20, while she was in the back office straightening out some boxes, Mr. Walia put his arm around Ms. Hom's neck and pulled her towards him. She pushed him away, and he tried to grab her again by her neck, but was not successful. Ms. Hom was very upset and angry.

On her last day, Thursday, June 21, Ms. Hom was printing a name on a cheque when Mr. Walia took out a plastic ruler and hit her lightly, two or three times, on her hand.

Ms. Hom left employment at that point and did not return except to pick up her pay cheque.

After Ms. Hom left Impact Interiors, she made persistent efforts to obtain alternative employment until she returned to school on September 10, 1990. She stated that overall, her experience with Mr. Walia and Impact Interiors left her angry and upset, but that it did not have any long-term effects.

Ms. Petersen began doing payroll for Mr. Walia at Impact Interiors Inc. on June 20, 1990, and left work the following day. She had worked for a subsidiary of Canada Cement LaFarge as a Payroll Supervisor for 10 years, and resigned on May 31, 1990 when the company relocated.

While straightening up the office on the first day, Ms. Petersen was approached by Mr. Walia, who tried to kiss her. She pushed him away. She said that Mr. Walia was fairly persistent, and Mr. Walia said to her that she was a "strong person".

The next day, when Ms. Petersen confronted Mr. Walia about the incident, he denied that it had taken place.

On Thursday, June 21, Ms. Petersen heard a confrontation between Mr. Walia and Ms. Hom in Mr. Walia's office. Ms. Petersen said that Mr. Walia was yelling and harassing Ms. Hom, and used language that was humiliating. After Ms. Hom left, Ms. Petersen asked him what was happening. Mr. Walia gave her a letter to retype, and while she was doing so, he grabbed her breasts. She responded by hitting him across the head. He complained that she had hit him, and she said that she would do it again. He grabbed her, and said "You're a strong person". She responded, "You're darned right, don't you touch me". Mr. Walia told her to finish the letter, but she refused, saying that she had a doctor's appointment. He replied, "I've got a big one, and I can come three times". Ms. Petersen left, missed her doctor's appointment and felt sick at home. She did not return to Impact Interiors, other than to pick up her pay cheque.

Ms. Petersen also made diligent efforts to mitigate her damages, but her efforts had not resulted in permanent employment as of the date of the hearing.

On the basis of the foregoing facts, I reach the following conclusions:

1. The Respondent Mr. Walia, for whose actions the Corporate Respondent is responsible, engaged in a course of vexatious comment or conduct that was known or ought reasonably to be known to be unwelcome, and thereby violated s.7(2) of the Code: Cuff v. Gypsy Restaurant et al. (1987), 8 C.H.R.R. D/3972 (Ont. Bd. of Inq.); Code, s.10(1). In particular, Mr. Walia tried to kiss Ms. Petersen; tried to kiss her again after she pushed him away; grabbed her breasts and arms; and, as she was leaving the office, made the comment about his "big one". Mr. Walia asked Ms. Hom about her personal life, whether she was dating a "black guy", offering to assist her in obtaining a "rich Chinese husband"; he kissed and he put his arm around her at the photocopier and, while discussing her studies, kissed her twice; he swore at her and hit her hand with a ruler. The behaviour, such as swearing and hitting Ms. Hom's hand with a ruler, need not be explicitly sexual in order to constitute "harassment because of sex": see, for example, Shaw v. Levac Supply Ltd. (1990), 14 C.H.R.R. D/36 (Ont. Bd. of Inq.) at pp. D/52-D/56. Non-sexual behaviour must be viewed in the overall context. In this case, Mr. Walia occupied a position of power over the two Complainants, and he abused it.

2. Mr. Walia, for whose actions the Corporate Respondent is responsible, violated para. 7(3)(a) of the Code. His actions in grabbing Ms. Petersen's breasts and in putting his arm around Ms. Hom and kissing her constituted sexual advances by a person who was certainly in a position to confer a benefit and ought reasonably to know that his actions were unwelcome. See Waroway v. Joan and Brian's Upholstering & Interior Decorating Ltd. (Ont. Bd. of Inq., January 8, 1992).

3. Mr. Walia's behaviour, for which the Corporate Respondent is responsible, poisoned the environment in which the two Complainants had to work; it demeaned them and tainted their workplace. In other words, he imposed terms and conditions of employment because of sex, which violated their

right to equal treatment under s.5)(1) of the Code: See Coutroubis v. Sklavos Printing (Ont. Bd. of Inq., 1981, unreported version), and Janzen v. Platy Enterprises Ltd. (1989), 10 C.H.R.R. D/6205 (S.C.C.).

4. Mr. Walia and the Corporate Respondent are jointly and severally liable for the damages which must be awarded under s.41(1) of the Code. The Respondents should make restitution to compensate the Complainants for the injury to their dignity and self-respect and the loss of their employment through a denial of their right to equal treatment. In Ms. Hom's case, I calculate her wage loss for 11 weeks at \$7.50 per hour for a 35-hour week; that is, \$2,887.50. In Ms. Petersen's case, she made reasonable attempts to mitigate and indeed earned \$25,427.13 up to the hearing of this matter. That figure must be subtracted from the earnings which she would have made during the 122-week period at \$350.00 per week, which is \$42,700.00. The remainder is \$17,272.87. Ms. Petersen did not request reinstatement.

5. I award interest by analogy to the Courts of Justice Act, R.S.O. 1990, c.43 from the date of service of the complaint, which was no later than January 1, 1991, at which time the applicable rate under the Courts of Justice Act was 12.3 per cent.

6. I have considered the historically low awards that have been made for mental anguish under what is now para. 41(1)(b) of the Code, as well as the indication in recent cases that these amounts are rising to reflect society's increased concern with the debilitating impact of violations of its fundamental laws such as the Code. Because of the brief duration of the Complainants' employment, and judging by their demeanour when they appeared before me, it is safe to say that this is not a case in which an award for mental anguish under the "second branch" of paragraph 41(1)(b) would test the \$10,000.00 limit contained in that paragraph and require consideration of whether a similar award, without limitation, can be made under the "first branch". See, for

example, the lengthy discussion in Lampman v. Photoflair Ltd. and Smith. (Ont. Bd. of Inq., September 18, 1992). In quantifying their damages for mental anguish, I have reviewed the oft-cited list of factors which appears in Torres v. Royalty Kitchen Ware Ltd. (1982), 3 C.H.R.R. D/858 (Ont. Bd. of Inq.). For mental anguish I award Ms. Hom. \$1,500.00, and Ms. Petersen \$2,500.00.

7. The interest components of these damage awards is calculated as follows:

(a) On Ms. Hom's award for mental anguish, the period of time between the termination of her employment and this decision is approximately 175 weeks, and so that calculation is

$$\frac{175}{52} \times 12.3\% \times \$1,500.00 = \$620.91$$

(b) On Ms. Petersen's award for mental anguish, the calculation is:

$$\frac{175}{52} \times 12.3\% \times \$2,500.00 = \$1,034.86$$

(c) On Ms. Hom's wage loss award, the duration of time between the midpoint of the claim and this decision is approximately 170 weeks, and so the calculation is:

$$\frac{170}{52} \times 12.3\% \times \$2,887.50 = \$1,161.11$$

(d) For Ms. Petersen's wage loss award, the duration of time between the midpoint of the claim and this decision is approximately 114 weeks, and so the calculation is:

$$\frac{114}{52} \times 12.3\% \times \$17,272.87 = \$4,657.70$$

8. I therefore order the Respondents to pay the Complainant Ms. Hom the total sum of \$6,169.52.

9. I order the Respondents to pay the Complainant Ms. Petersen the total sum of \$25,465.43.

10. I also order the following non-monetary remedies:

(a) The Respondents are to provide a letter of assurance indicating their awareness of the provisions of the Ontario Human Rights Code and their intent to abide by them;

(b) The Respondents are to post cards containing the provisions of the Code in a prominent place in the workplace;

(c) For the next three years, the Respondents are to report to the Toronto Central Office of the Ontario Human Rights Commission the name, address and telephone number of each female employee who leaves employment with the Corporate Respondent. This notification is to be made within two weeks of her departure;

(d) The Respondent Mr. Walia is ordered to attend a seminar on sexual harassment to be conducted by the Ontario Human Rights Commission or a person acceptable to it, at a mutually convenient time and place, within the next two months.

I will remain seized of this matter for purposes only of implementation of this decision.

DATED at Toronto this 16th day of November , 1993.



RAJ ANAND

Board of Inquiry

